**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Crl.A.No.778-SB of 2003**

Date of Decision : 2.5.2013

Sanjay Gupta

...Appellant

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE MAHESH GROVER

.....

Present : Mr.Baldev Singh, Sr. Advocate with
Mr.Deepender Singh, Advocate
for the appellant.

Mr.Rajeev Kawatra, Sr.DAG, Haryana
for the State.

...

**MAHESH GROVER, J.**

The appellant questions the judgment dated 5.4.2003 recording his conviction and the order awarding him sentence to undergo RI for a period of three years and pay a fine of Rs.10,000/- under Section 498-A IPC. In default of payment of fine he was sentenced to undergo further RI for a period of one year. Qua the offence under Section 306 IPC he was sentenced to undergo RI for a period of ten years and pay a fine of Rs.50,000/- and in default of payment of fine to undergo further RI for a period of two years. The substantive sentences were ordered to run concurrently.

The appellant along with his parents Trilok Chand and Smt. Tej Rani faced prosecution under Sections 498-A and 304-B IPC.

Deceased Renu was married to the appellant on

31.10.1998. At the time of welcome ceremony of the Barat the appellant and his family members are reported to have held the other ceremony hostage to a demand of Rs.1,50,000/-. This was paid to them under extreme pressure by the parents of deceased Renu. She was thereafter constantly harassed in her matrimonial home and a demand of a car was raised repeatedly. Om Parkash, brother of her mother Raj Rani along with other respectables made efforts for approachment and pleaded that their family was not so financially well of so as to meet the demands of dowry. These demands had a telling effect on the health of the deceased and also her father damaging his kidneys. The deceased, who was expecting a child, was left at the house of her parents just a month prior to the date of delivery. A male child was born but neither the appellant nor his family members made any effort to visit the deceased or her new born. The deceased Renu was persuaded to go back to her in-laws' house along with articles worth Rs.50,000/- but this did not satisfy the appellant and his family members and her harassment continued. On 18.12.2000 at about 8.00 p.m. a phone call was received by Nemi Chand (PW13) that his niece has been poisoned to death. He along with 10/15 persons reached the hospital at Gurgaon and was informed that the dead body of Renu was lying in the morgue. FIR in this regard was registered since the death of the deceased was established to be on account of poisoning.

Report under Section 173 Cr.P.C. was submitted. The appellant went to trial where the prosecution examined as many as 18

witnesses. The post-mortem report conducted by Dr.S.K.Sharma (PW2) and the Chemical Examiner's report established the cause of death on account of celphos poisoning. The report suggested that the celphos was placed in the vagina of the deceased which eventually led to her poisoning and finally her death.

The appellant pleaded false implication. Although his statement under Section 313 Cr.P.C. is a detailed one, yet no particular explanation has been given by him regarding the death of his wife except to say that his wife had been suffering from seizures and she was being treated by one Dr.Nathani and that he never harassed her. He also stated that he was also, in fact, informed about her death and he was not present at the time of occurrence.

The other two accused Trilok Chand and Smt. Tej Rani were acquitted of the charges against them, and therefore it is not necessary to discuss their defence.

The trial court after examining the evidence on record concluded that the charge against the appellant under Section 498-A IPC stood established, but chose to convict the appellant under Section 306 IPC while exonerating him of the charge under Section 304-B IPC.

Questioning the aforesaid judgment learned counsel for the appellant has contended that he has no grievance against the conviction awarded under Section 498-A IPC but Section 306 IPC is certainly not made out as it was neither the case of the prosecution nor any evidence to that effect has come and therefore in this view of

the matter the appellant cannot be held guilty of abetting the suicide of the deceased more particularly when there is no appeal by the State.

Learned counsel for the State, on the other hand, has stated that there was no infirmity in the findings recorded by the court below.

I have considered the contentions raised before this Court and perused the material on record.

Concededly the appellant is not questioning the conviction and sentence awarded to him under Section 498-A IPC. Even otherwise a perusal of the testimony on record clearly established that all the witnesses have stated that at the time of marriage ceremony itself the appellant and his family members had held the ceremony ransom by demanding a sum of Rs.1,50,000/- which was arranged and paid to him. Subsequently also, there is evidence in the shape of the testimony of the uncle and brother of the deceased that there were constant demands of dowry leading to the failure of health of the father of the deceased who was put on dialysis.

Once the finding under Section 498-A has not been questioned, then this court is left to examine as to whether the conviction under section 306 IPC was maintainable or not. The post mortem report is extracted here below :-

> "Viscera is preserved and sent for chemical analysis. There is evidence of management for poisoning (in police paper) prior to the death."

The factum of death on account of poisoning is therefore not disputed. Likewise the death having taken place within seven years of marriage is also not disputed. There is thus strong presumption of law under Section 113-B of the Indian Evidence Act which is raised against the appellant and this presumption of law had to be offset by cogent evidence on record, which the appellant failed to produce and in any eventuality when the death takes place within seven years of marriage and when allegations of cruelty on account of dowry stands established, which are not being questioned, then in such an eventuality the presumption of law against the appellant acquires surer footing. The appellant has, in fact, seemingly tried to derive an advantage from the fact that appeal has not been preferred by the prosecution, and therefore has pleaded that offence under section 306 IPC having not been made out on the basis of any evidence his conviction under Section 498-A IPC would get him a ticket to freedom as he by now has already undergone the period of sentence under this provision of law. A perusal of the impugned judgment as also the record indicates that, in fact, there was no material or evidence to suggest that the deceased committed suicide. In his statement recorded under Section 313 Cr.P.C. the appellant had stated that the deceased was suffering from seizures and this might have prompted her to commit suicide. Indeed, there is testimony of Dr.Nathani who has stated that the deceased was diagnosed with epilepsy but that itself does not establish the cause of death being suicide. Rather the repeated demands of dowry and the cruelty meted

out to the deceased would suggest that it was a case where the conviction ought to have been awarded under Section 304-B IPC which was the charge originally framed against the appellant. Section 221(2) of the Code of Criminal Procedure is extracted here below :-

> "**221. Where it is doubtful what offence has been committed**.-- (1).....
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> (2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

It is evident that the aforesaid extracted provision of law empowers the court to record conviction for an offence which is shown to have been committed even though a person may not have been charged for the same. Here in the instant case the appellant was appropriately charged under Section 304-B IPC but his conviction was wrongly recorded under Section 306 IPC as there was no evidence in this regard. Whereas there was overwhelming evidence suggesting cruelty on account of demands of dowry and death within a period of 7 years of marriage inviting a strong presumption of law under Section 304-B IPC. It would thus be safe to fall back on the provisions of Section 221(2) Cr.P.C. and convict the appellant under Section 304-B IPC keeping in view the fact that the appeal is in continuation of the trial.

Accordingly, the impugned judgment is modified only in so far as the conviction recorded under Section 306 IPC is concerned and instead the appellant is ordered to be convicted under Section 304-B IPC without any alteration in the sentence.

The appeal is dismissed.

May 2, 2013 (MAHESH GROVER)
JUDGE

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